IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 852 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAGESHKUMAR K THAKER - Petitioner(s)
Versus
CHIEF OFFICER & 4 - Respondent(s)

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Appearance :
MR JJ YAJNIK for Petitioner(s) : 1,
MR PRAKASH K JANI for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,
MR RC JANI for Respondent(s) : 3,
NOTICE SERVED for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/05/2006

ORAL JUDGMENT

1.Though learned advocate Shri J.J.Yagnik appearing for the petitioner has filed sick note, the petitioner himself is present before the Court. He submitted that

he may be heard and the Court may pass appropriate order in accordance with law.

2. I have heard the petitioner in person and learned advocate Shri Jani for the Sidhpur Municipality.

3. In nutshell, the case of the petitioner is that by two separate resolutions dated 18th December 1996 and 26th December 1996, the petitioner was by-passed for promotion to the next higher cadre. On 18.12.96, his junior one Sureshkumar Govindlal Bhatt was promoted as Tax Superintendent and yet again on 26.12.1996, one Ashwin Thakkar was promoted as Shop Inspector. It is the case of the petitioner that both these employees were junior to him in the feeder cadre of Clerk. He has, therefore, filed the present petition seeking promotion from due date.

4. It is the case of the petitioner that he being the senior ought to have been considered for promotion ahead of the juniors. Learned advocate Shri Jani for the Sidhpur Municipality is unable to controvert the averments of the petitioner that he was senior to both the abovementioned officials. Upon a query put by the Court, after perusing the material on record, he submitted that there are no other reasons why the petitioner should have been superseded for grant of

promotion. He is unable to point out any adverse material against the petitioner which would have enabled the respondents to ignore his claim for promotion.

5. Under the circumstances when persons junior to the petitioner were promoted, the case of the petitioner ought to have been considered for promotion. Admittedly, the petitioner was senior to other employees who received promotion. The action of the respondents, therefore, cannot be approved. Ordinarily, when this Court finds that the case of the employee has been wrongly not considered for promotion, appropriate direction would be to direct the employer to consider the case of the petitioner for promotion. In the present case, however, learned advocate Shri Jani was candid enough to state before the Court that there is no material on record which would permit the respondents to deny the claim of the petitioner for promotion. Under these facts and circumstances, therefore, while holding that non-promotion of the petitioner to the higher cadre of Tax Superintendent in the month of December 1996 when his junior was promoted is illegal, it is further directed that the petitioner shall be promoted to the post of Tax Superintendent

with effect from 18.12.96. Since the petitioner had not discharged his duties on the promotional post, he will not get arrears of salary and other monetary benefits for the said period on the basis of such retrospective promotion. He would, however, be entitled to notional pay fixation, seniority and all other incidental benefits.

6. In the result, the petition is allowed. Respondents are directed to give deemed date of promotion to the petitioner of 18th December 1996 on the post of Tax Superintendent and accord all consequential benefits except arrears of salary and other monetary benefits from 18th December 1996 till date. With these directions, the petition is allowed. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)